which were then in the defendant's possession. *Held*, that this is error, though not prejudicial. *Hanish* v. *United States* (not yet reported).

For a full discussion of the principle involved, see NOTES, p. 221.

EVIDENCE — OPINION EVIDENCE — DOES THE OPINION RULE APPLY TO DYING DECLARATIONS. — In a trial for voluntary manslaughter, a dying declaration of the deceased, to the effect that the defendant had killed him "on purpose," was admitted over the defendant's objection that it was opinion evidence. *Held*, that the admission was proper. *Pippin* v. *Commonwealth*, 56 S. E. 152 (Va.).

It is a general rule that only such testimony as would have been admissible from the deceased if he were a witness is admissible as his dying declaration. *Whitley* v. *State*, 38 Ga. 50, 70. This would generally exclude opinions. See 1 GREENLEAF, EVIDENCE, 16 ed., § 159. Accordingly, the opinion of the deceased as to the defendant's fault in killing him is excluded in many states. *Berry* v. *State*, 63 Ark. 382, 38 S. W. 1038; *Kearney* v. *State*, 101 Ga. 803, 29 S. E. 127; *State* v. *Sale*, 119 Ia. 1, 92 N. W. 680. *Contra*, *Gerald* v. *State*, 128 Ala. 6, 29 So. 614; *Boyle* v. *State*, 105 Ind. 469, 5 N. E. 203. There seems to be a general feeling in all the cases that opinion as such should be excluded; many courts which admit accusations of the deceased as dying declarations construing the accusation as a method of indicating a complex set of facts. *Commonwealth* v. *Mathews*, 89 Ky. 287, 12 S. W. 333. It has been argued that the reason for the opinion rule, which is to leave the drawing of inferences to the jury when the facts from which the witness drew his opinion can be detailed to them, does not apply to dying declarations, where it is impossible to put the jury in possession of the facts. See 2 WIGMORE, EVIDENCE, § 1447. But as the opinion rule is also based largely on the fear that opinions of witnesses will unduly prejudice the jury, an objection to which accusations like those in the principal case are especially open, it seems wise to exclude such declarations whenever, in the opinion of the trial judge, the danger of prejudice outweighs their probative value. Abuse of the trial judge's discretion should then be the only ground for reversal.

EVIDENCE — *RES GESTAE* — WHETHER STATEMENTS CHARACTERIZING ADVERSE POSSESSION ARE HEARSAY. — On the issue of whether X.'s possession of certain land was adverse, testimony that X. had said, while in possession, "that she made an exchange . . . in which she got the land now in dispute," was held inadmissible. *Oahu Ry. Co.* v. *Kaili*, 22 Hawaii Adv. 673.

The court subscribed to the accepted doctrine that the declarations of a person in possession of land as to the nature of his claim are part of the *res gestae*. *McConnell* v. *Hannah*, 96 Ind. 102. Nevertheless it excluded the testimony on the ground that it was merely narrative of a past transaction. *Wilkinson* v. *Bottoms*, 56 So. 948 (Ala.); *Whitaker* v. *Whitaker*, 157 Mo. 342, 354, 58 S. W. 5, 8. But the use of the term "narrative" as a limitation to the *res gestae* doctrine means "non-contemporaneous with the act characterized." *Cf. Rockwell* v. *Taylor*, 41 Conn. 55, 59–60; *Carter* v. *Buchannon*, 3 Ga. 513, 517–18; *Commonwealth* v. *Hackett*, 2 Allen (Mass.) 136, 139; *Sorenson* v. *Dundas*, 42 Wis. 642, 643. See 1 GREENLEAF, EVIDENCE, § 110; 3 WIGMORE, EVIDENCE, § 1756 (*c*). In the principal case, as the words in question characterize a contemporaneous possession, their exclusion indicates a confusion of the popular with the technical import of the word "narrative." But a correct analysis shows the problem not to be one of *res gestae* at all. The fact to be proven is the mental attitude of the occupant of the land. As circumstantial evidence of this, evidence whose value lies rather in the inference from the fact of statement than in the truth of what is asserted, the declarations are properly

admitted without reference to hearsay rules. See THAYER, LEGAL ESSAYS, pp. 291 *et seq.*; 3 WIGMORE, EVIDENCE, §§ 1715, 1778–80; 28 HARV. L. REV. 299. The form of statement, therefore, whether narrative of a past event or explanatory of a present occurrence, is immaterial.

HOMESTEAD — EXEMPTION — REVIVAL OF JUDGMENT LIEN ON SALE OF HOMESTEAD. — The plaintiff had recovered a judgment against one who owned only a homestead constitutionally exempt from forced sale. Later the homestead was alienated and the plaintiff now attempts to enforce his judgment lien against the grantee. *Held*, that the property passed to the grantee free from any lien. *Gray* v. *Deal*, 151 Pac. 205 (Okl.).

There are two views as to the operation of a judgment lien on property exempt by statute from forced sale. In a few states it is held, as in the principal case, that the provision negatives the possibility of even a dormant lien so that the homestead may be conveyed free and clear. *Morris* v. *Ward*, 5 Kan. 239; *Green* v. *Marks*, 25 Ill. 221. This result is sometimes reached by a construction based on other statutes indicating this to be the legislative intent. *Lamb* v. *Shays*, 14 Ia. 567. The majority view, however, is that the lien attaches, though it is held in abeyance by the exemption statute, which grants only a personal right of exemption to the owner of the homestead. Thus the lien becomes active when the land is alienated. *Allen* v. *Cook*, 26 Barb. (N. Y.) 374. See *Norris* v. *Kidd*, 28 Ark. 485. The Oklahoma constitution provides that the homestead of the family shall be exempt from forced sale for the payment of debts. WILLIAMS, CONST., § 303. But a statute declares that judgments of courts of record shall be liens on the real estate of the debtor. GEN. STAT. OKL., § 5192. A strict construction of the exemption would not prohibit the attachment of the lien but only the final process or forced sale. Whether a court will make such a construction, or follow the rule of the principal case, depends, in the absence of any evidence of legislative intent, on the general attitude toward the policy of the exemption acts in the particular jurisdiction. *Morris* v. *Ward*, *supra*. *Cf. Norris* v. *Kidd*, *supra*.

INSURANCE — RIGHT OF BENEFICIARY — WHETHER RESERVED RIGHT TO CHANGE BENEFICIARIES GIVES INSURED RIGHT TO SURRENDER POLICY WITHOUT CONSENT OF BENEFICIARY. — A man in taking out a policy of life insurance reserved the right to change beneficiaries. Later, without the consent of the beneficiary, the insured surrendered the policy to the company, receiving consideration therefor. After the death of the insured the beneficiary sues the company on the policy. *Held*, that she may recover. *Roberts* v. *N. W. Nat'l Life Ins. Co.*, 85 S. E. 1043 (Ga.).

It is well settled that the beneficiary of an ordinary life insurance policy has a vested right to the amount to be paid. *Mutual Life Ins. Co.* v. *Allen*, 212 Ill. 134, 72 N. E. 200; *Washington Life Ins. Co.* v. *Berwald*, 97 Tex. 111, 76 S. W. 442. See 13 HARV. L. REV. 682. The same is true although the policy provides that on a certain condition another is to become beneficiary. *In re Peckham*, 29 R. I. 250, 69 Atl. 1002; *Lockwood* v. *Mich. Mutual Life Ins. Co.*, 108 Mich. 334, 66 N. W. 229. In these cases the insured has put the policy beyond his power of control. Even where the insured has reserved control through the right to change beneficiaries, some courts, as that in the principal case, hold that the right of the beneficiary is vested. *Holder* v. *Prudential Ins. Co.*, 77 S. C. 299, 57 S. E. 853; *Sullivan* v. *Maroney*, 76 N. J. Eq. 104, 73 Atl. 842. As the reservation of the right to change of beneficiaries certainly cannot be construed to include a right of the insured to surrender the policy, if the interest of the beneficiary is vested, it cannot be destroyed by an unconsented surrender. *Holder* v. *Prudential Ins. Co.*, *supra*. However, a vested right in the bene-